

WINSTON & STRAWN

1400 L STREET, N.W., WASHINGTON, DC 20005-3502
202-371-5700

Electronic
Letterhead

35 W. WACKER DRIVE
CHICAGO, IL 60601-9703
312-558-5600

200 PARK AVENUE
NEW YORK, NY 10166-4193
212-294-6700

38TH FLOOR
333 SOUTH GRAND AVE.
LOS ANGELES, CA 90071-1543
213-615-1700

43 RUE DU RHONE
1204 GENEVA, SWITZERLAND
41-22-317-75-75

21 AVENUE VICTOR HUGO
75116 PARIS, FRANCE
33-1-53-64-82-82

February 8, 2002

Chief, Rules and Directives Branch
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Comments on NUREG-1713 (Standard Review Plan for Decommissioning Cost Estimates for Nuclear Power Reactors) and on Draft Regulatory Guide DG-1085 (Standard Format and Content of Decommissioning Cost Estimates for Nuclear Power Reactors)

On November 28, 2001, the Nuclear Regulatory Commission ("NRC") published in the *Federal Register* a Notice of Issuance and Availability for Comment of draft versions of NUREG-1713, "Standard Review Plan for Decommissioning Cost Estimates for Nuclear Power Reactors," and DG-1085, "Standard Format and Content of Decommissioning Cost Estimates for Nuclear Power Reactors." On behalf of the Utility Decommissioning Group ("UDG") and other nuclear power reactor licensees, including Exelon Nuclear and PSEG Nuclear, we submit the attached comments on the draft guidance documents.

Respectfully submitted,



Joseph B. Knotts, Jr.
William A. Horin
L. Michael Rafky

Attachments: As stated

**COMMENTS ON NUREG-1713 (STANDARD REVIEW PLAN FOR
DECOMMISSIONING COST ESTIMATES FOR NUCLEAR POWER REACTORS)**

GENERAL COMMENTS ON NUREG-1713

Overall, the draft guidance is well-structured and easy to follow. We commend the staff for this effort and for providing the opportunity to provide comments.

There are, nonetheless, certain elements of the draft guidance which we believe warrant clarification and our comments below reflect those specific instances. In addition, there is a fundamental general concern regarding the decommissioning cost estimate regulatory scheme that we believe should be addressed in the draft.

Specifically, we believe that there is an additional decommissioning cost estimate that needs to be addressed separately in the guidance. That is the "cost estimate" ("CE") set forth in 10 C.F.R. § 50.75(b)(4). The regulations do not support, as the draft guidance suggests, the proposition that this particular "cost estimate" is necessarily comparable to the "site-specific cost estimate" ("SSCE") provided for in 10 C.F.R. § 50.82(a)(8)(iii). Rather, the CE, which was identified in the regulations years before the SSCE requirement was established, is a separate estimate.¹ Accordingly, the CE should be accorded separate treatment in the guidance, as it is accorded separate regulatory treatment. Such guidance and treatment is absent from the draft Standard Review Plan ("SRP").

¹ The original decommissioning funding rule (53 Fed. Reg. 24,018 (June 27, 1988)) provided for three cost estimates (in addition to the certification formula amount). These were the "cost estimate" ("CE") that may be used in lieu of the certification amount (10 C.F.R. § 50.75(b)(1988)), the preliminary decommissioning plan cost estimate (10 C.F.R. § 50.75(f)(1988)) ("PDP-CE"), and the proposed decommissioning plan "updated cost estimate" (10 C.F.R. § 50.82(b)(4)(1988)). Only later, in 1996 (*see* 61 Fed. Reg. 39,278 (July 29, 1996)) did the regulations create and separately identify the site-specific decommissioning cost estimate ("SSCE") in 10 C.F.R. § 50.82(a)(8)(iii). At the same time the rules were amended to add another requirement for a "post-shutdown decommissioning activities report...estimate of expected costs" in 10 C.F.R. § 50.82(a)(4)(i) ("PSDAR-EEC"). There appears to have been no tie made between the CE and the later-created SSCE. Further, that the SSCE is a stand-alone cost estimate is evidenced by the limited direction provided by the language in 10 C.F.R. § 50.82(a)(8)(iii) that such a cost estimate should be submitted "if not already submitted." Such language indicates not only that there is no requirement that the SSCE be submitted earlier (*e.g.*, to support the CE, the PDP-CE, or the PSDAR-EEC) so long as it is provided "within 2 years following permanent cessation of operations" (10 C.F.R. § 50.82(a)(8)(iii)), but that, conversely, there is no expectation that any of those earlier funding estimates (including 10 C.F.R. § 50.75(b)(4)) must use the SSCE format.

In particular, the guidance should address the point that the CE should not be expected to involve the same level of detail as the SSCE. Where a licensee chooses to utilize a CE - with lesser scope and detail than were it an SSCE - that CE would continue to be subject to the requirement of Section 50.75(b)(1) that the CE "may be more but not less than" the minimum certification amount established by applying the algorithm in Section 50.75(c). On the other hand, were a licensee to submit a SSCE at some point during plant operation which satisfied the guidance regarding the scope and level of detail set forth in this draft SRP with respect to the SSCE, it would also be appropriate (both from a regulatory and practical perspective) for such a cost estimate to be applied to a licensee's ongoing collection of decommissioning funds, irrespective of whether the SSCE produced a figure that was greater than or less than the minimum certification amount.² This is a reasonable result in that (1) the regulations already allow for such an approach, (2) the Commission has experience with evaluating and has accepted licensee SSCEs in the context of 10 C.F.R. § 50.82, and (3) the biennial update provisions of 10 C.F.R. § 50.75(f)(1) would still apply even if an SSCE was employed during plant operation.

In sum, there should be five categories of cost estimates addressed in the draft SRP which involve some element of site-specific considerations, as follows:

- ?? **Cost Estimate ("CE") (10 C.F.R. § 50.75(b)),**
- ?? **Preliminary Decommissioning Plan Cost Estimate ("PDP-CE") (10 C.F.R. § 50.75(f)),**
- ?? **Post-Shutdown Decommissioning Activities Report Estimate of Expected Costs ("PSDAR-EEC") (10 C.F.R. § 50.82(a)(4)(i)),**
- ?? **Site-Specific Cost Estimate ("SSCE") (10 C.F.R. § 50.82(a)(8)(iii)), and the**
- ?? **License Termination Plan-Updated Site-Specific Cost Estimate ("LTP-USSCE") (10 C.F.R. § 50.82(a)(9)(ii)(F)).**

Each of these estimates should be considered independently and guidance provided with respect to each. Indeed, the SRP already does so with respect to four of the five.

² We believe that this result could be accomplished without rulemaking in light of (1) the distinctions that already exist in the decommissioning funding rules for the CE, PDP-CE, PSDAR-EEC and the SSCE, and (2) the absence of any regulatory provision applying the Section 50.75(b)(1) CE restriction to a Section 50.82(a)(8)(iii) SSCE. In fact, the draft guidance already appears to acknowledge that use of a SSCE is not subject to the restrictions applicable to the CE when that guidance discusses the PDP-CE (*see, e.g.*, NUREG-1713 at Section C.1.4.1, p.12). We note also that the provision of 10 C.F.R. § 50.82(a)(9) concerning the license termination plan ("LTP") is the only other decommissioning funding provision that specifically refers to the SSCE (discussing an updated SSCE ("LTP-USSCE") to be provided with the submittal of the LTP).

Further, in view of their independent purposes at successive stages of decommissioning funding and planning, it would be reasonable to expect each to involve successively increasing levels of detail leading up to the detail provided in the SSCE.³ It would also be consistent with the existing regulatory scheme that each successive estimate may be performed at an earlier point in the overall process.

Another general comment concerns the guidance related to the treatment of the situation where NRC decommissioning funds and non-NRC funds may have been commingled by licensees in a single decommissioning account. The guidance in NUREG-1713 does not address this question. However, the draft Regulatory Guide provides a discussion of this, but only briefly. We urge the Staff to provide direction in this guidance that would establish a mechanism whereby licensees could provide an "accounting" of their different monies and thereby allow for an effective segregation of the NRC and non-NRC funds (whether by formal "accounts" or by another accounting mechanism).

Specifically, we request that the staff provide guidance as to the circumstances, timing and mechanism(s) by which licensees may effectuate or demonstrate the separation of NRC and non-NRC funds even when those funds are present in the same account. In our view, funds that were allocated for non-NRC decommissioning purposes (perhaps as demonstrated by the itemization of costs provided to a public utility commission and on which total collections through rates are based), and which are not themselves relied upon to satisfy NRC decommissioning funding requirements, should be readily segregable by licensees at any point in time. It would be inappropriate to penalize licensees by virtue of an absolute prohibition of withdrawals that captures both NRC decommissioning and non-NRC funds, though not intended to capture the latter. Licensees may have situations where funds were collected for particular purposes that are not within the scope of the NRC decommissioning definition, which purposes could involve activities most appropriately carried out prior to plant shutdown, yet the funds are unavailable due to the absolute prohibition against early withdrawal of funds from a trust that contains NRC decommissioning funds prior to shutdown (except for a small fraction for planning purposes) (*see* 10 C.F.R. § 50.82(a)(8)). Irrespective of the reason a licensee may have commingled funds, such licensees should not suffer an unjustified financial penalty (which would arise if they are forced to obtain replacement funds for such activities) simply because an NRC regulation is applied in an unintended manner.

In addition, while recognizing the need for licensees to continue to provide decommissioning funding assurance, there may be valid and reasonable circumstances where access to funds apart from the 3% for planning purposes should be permitted during plant life, rather than following plant shutdown. For instance, there may be situations where a licensee is in a position of being able to perform now, rather than following shutdown, activities that would normally be conducted as part of decommissioning. Even where those activities could fall within the scope of the NRC decommissioning definition, the use of funds now may be more

³ The draft SRP also appears to recognize this principle of successively increasing levels of detail in the context of its discussion of the PDP-CE (*see, e.g.*, NUREG-1713 at Section C.1.2, p.12).

cost-effective than delaying the activities for many years and may provide operational as well as public health and safety benefits. Factors that may be considered in that context could include (1) whether the activity had already been included directly or indirectly in decommissioning cost estimates relied upon by a licensee for decommissioning funding collections,⁴ (2) the nature of the licensee's cost estimates,⁵ (3) the status of the licensee's NRC-required decommissioning funding levels before and after the proposed expenditure, (4) the status of present or future licensee decommissioning collections,⁶ and (5) the size of the proposed withdrawal compared to the total fund. We request that the NRC include within this guidance, or in another context if appropriate, direction as to the mechanisms and circumstances where current withdrawals from NRC decommissioning funds could be accomplished for such purposes. In view of the otherwise operational status of the plant, such activities would undoubtedly be limited in scope and relative cost.

SPECIFIC COMMENTS ON NUREG-1713

The specific comments below are arranged according to the subheadings used in NUREG-1713.

“B. DISCUSSION”

In the first paragraph immediately following this heading, on page 2, the staff describes how decommissioning funding requirements can be segregated into two categories. However, there is little explanation in the ensuing provisions that addresses the parameters of the various timing requirements for submitting the different cost estimates in either category, beyond reiterating the language in existing NRC regulations.

⁴ For example, a plant system that was originally designed for and intended to be used throughout plant life may become unnecessary in light of changes in NRC requirements or guidance. Indeed, as a result of regulatory changes being adopted in the context of NRC risk-informed initiatives some components or systems may no longer be required and licensees may be able to remove those systems or components during operation, instead of doing so following shutdown. The licensee may have originally planned on removal and disposal of the systems or components following shutdown.

⁵ Compare the level of detail in a SSCE, a PSDAR-EEC (both discussed above), and in the generic NRC formula amount. The more detailed and precise the estimate is, the more likely the cost estimate may serve as a reasonable basis for permitting withdrawal of funds. Indeed, NRC regulations already allow the unrestricted use of funds beyond the 3% planning limit once the PSDAR and a SSCE are filed (*see* 10 C.F.R. § 50.82(a)(8)(ii)).

⁶ If a licensee is already fully funded, or if full funding is already guaranteed in some form, then there would be an even higher level of assurance that the impact on the fund from these withdrawals could be determined. In all cases, of course, the purpose is to have a reasonable level of assurance that full funding will be provided.

We urge that additional detail be included to aid licensees in assuring compliance from a timing perspective with the many NRC requirements applicable to the decommissioning funding process. Specific places where such detail would be warranted are discussed in the following comments. For the second category, we propose that the language be revised to read “(2) those that specify when licensees must submit and the terms of . . .” The added language more accurately describes NRC decommissioning requirements governing site-specific cost estimates.

“B.2. DECOMMISSIONING COST ESTIMATES”

First, as discussed in the comments under the “General” heading above, an additional cost estimate, *i.e.*, that described in § 50.75(b)(4), should be addressed in this guidance. With respect to the present draft of the proposed guidance we make the following comments:

The second bulleted item in this section states that “The PSDAR is to be submitted prior to or within 2 years following permanent cessation of operations.” We request that the staff clarify the phrase “prior to” by explaining if there would be any restriction as to how many years in advance of ceasing operations a PSDAR may be submitted, or if as the language suggests no such limit exists.

The third bulleted paragraph on page 4 summarizes 10 C.F.R. § 50.82(a)(8)(iii), but leaves out the portion of that regulation stating that a site-specific decommissioning cost estimate need not be submitted again if one has already been provided to the NRC. This information should be added to the paragraph to bring it into conformance with the regulation. Discussion related to the effect of such a prior submittal on the three earlier cost estimates should also be provided in the body of this guidance.

A nonbulleted paragraph following the third bulleted paragraph on page 4 discusses the use of an SSCE in the certification of decommissioning funding pursuant to 10 C.F.R. § 50.75(b)(4). As discussed in the comments provided under the “General” heading above, this particular cost estimate, *i.e.*, that cited in 10 C.F.R. § 50.75(b)(4), is not the same cost estimate as described in 10 C.F.R. § 50.82(a)(8)(iii). Accordingly, this nonbulleted paragraph should be deleted and the cost estimate under Section 50.75(b)(4) identified and addressed separately as the first cost estimate in this section.

The fourth bulleted item on page 4 cites the requirement in § 50.82(a)(9)(i) that a license termination plan must be submitted “at least 2 years before termination of the license.” We request that the staff provide clarification, similar to that sought above for the PSDAR submission, as to how far in advance of license termination may an LTP be submitted, or if as the regulation suggests no such limit exists.

The final paragraph on page 4 in part describes limits on use of “generic” decommissioning funds. The term “generic” appears to refer generally to Section 50.75. It

would be better to cite Section 50.75(c) specifically and also address the implications if an SSCE had been submitted earlier in a plant's life.

“B.3. DECOMMISSIONING COST DEFINITION”

The second paragraph in this section contains a statement referring only to a “license.” We suggest that this term be restated as “Part 50 license” to clarify the scope of the paragraph. Further, there are many places in this guidance at which the activities excluded from NRC decommissioning are addressed. This is an important factor for licensees in determining the scope and allocation of funds collected for NRC-decommissioning purposes. It would be useful if the scattered guidance regarding such exclusions was gathered in one location in the guidance.

“B.4. COST ADJUSTMENT METHODOLOGY”

The title of this section is insufficiently detailed - it is not clear which decommissioning costs and/or estimates are to be adjusted using the methodology discussed therein. The introductory paragraph on page 5 does not provide the necessary explanation, as it too only refers to “methodology,” and a “typical allocation of cost adjustment factors.” The staff should clarify this point. One final comment on this paragraph - the second “the” in line 5 is superfluous and should be removed.

“C. DECOMMISSIONING COST ESTIMATES STANDARD REVIEW PLAN”

A sentence in the introductory paragraph of this section, on page 10, briefly discusses certification of adequate decommissioning funds in relation to site-specific cost estimates. This discussion should be revised consistent with the comments provided, under the “General” heading, and in particular as related to the distinctions in scope, purpose and effect between the 10 C.F.R. § 50.75(b)(4) CE, and the 10 C.F.R. § 50.82(a)(8)(iii) SSCE.

“C.1. PRELIMINARY COST ESTIMATE”⁷

The introductory paragraph immediately following this subheading states that in the event a power reactor prematurely shuts down and submits its certification of permanent cessation of operations, “the requirement of 10 CFR 50.75(f)(2) to submit a preliminary cost estimate becomes applicable at the time the licensee docket its certification of permanent shut down, and the preliminary cost estimate should be submitted at the same time.” However, the NRC’s decommissioning regulations contain no such requirement. We believe it would instead be prudent not to foreclose licensees’ options in these circumstances. For instance, in such a situation as that presented here, § 50.82 will be governing a shutdown licensee’s actions, and pursuant to that regulatory regime that licensee will have to submit a PSDAR or SSCE soon after shutdown. It would be an inefficient and illogical use of resources to require that a PDP-CE also

⁷ As noted in the “General” comments above, a discussion of the CE under 10 C.F.R. § 50.75(b)(4) should be provided prior to the PDP-CE discussion.

be submitted when in effect there would be no separate purpose to be gained by having three types of cost estimates (PDP-CE, PSDAR-EEC and SSCE) provided in a period of two years or less. Further, the licensee would have been providing assurance of decommissioning funding in accordance with 10 C.F.R. § 50.75(f)(1), and elsewhere in this draft guidance the PDP-CE is deemed acceptable if that estimate is greater than or equal to the Section 50.75(c) estimates. Thus the licensee will have already effectively satisfied the purpose of Section 50.75(f)(4) and no additional purpose would be served by creating an additional obligation for submitting a PDP-CE in these circumstances.

With regard to the third paragraph under this subheading, concerning adjustment of cost estimates where a licensee is using SAFSTOR, we recommend that the guidance provided pursuant to § 50.82 be expanded to address similar fund adjustments made pursuant to § 50.75(f)(4).

“C.1.2 Areas of Review”

In the second line of the first paragraph under this subheading, the word “approximately” should be replaced by “at or about,” to conform to the language in Section C.1, “PRELIMINARY COST ESTIMATE,” as well as the underlying regulation (10 C.F.R. § 50.75(f)(2)).

“C.1.3. Acceptance Criteria”

The first sentence under this subheading should add the text at the end “and 10 C.F.R. §§ 50.75(f)(4) and 50.82(a)(8)(iv), as applicable.” This would ensure that the acceptance criteria would account for all possible regulatory options covering the provision for estimate adjustments related to the PDP-CE.

“C.1.4.1 Comparison of the preliminary cost estimate with the minimum required decommissioning fund”

This section of NUREG-1713 is confusing in regard to its discussion of the relationship among 10 C.F.R. §§ 50.75(b), (c) and (f)(2). At one point in Section C.1.4.1, the NUREG states that “[t]he preliminary cost estimate is acceptable if it is greater than or equal to the decommissioning financial assurance requirement amount [of § 50.75(c)],” and that if that estimate is “less than” the Section 50.75(c) formula amount then “adequate justification” should be provided. However, in the next paragraph of that same section of the NUREG, the NRC states that “[i]f the preliminary cost estimate equals or exceeds the generic decommissioning fund amount of 10 CFR 50.75(c), the reviewer should assess the licensee’s cost estimate to determine whether all significant costs have been included.” This statement appears on its face to be contradictory to the above guidance in the same section (*i.e.*, in one instance the estimate is acceptable if it is equal to or greater than the Section 50.75(c) formula amount, while in the second additional assessment is required). These paragraphs should be reconciled. It may be, and it would seem consistent, that the second paragraph was intended to expand on the “less than” scenario, and inadvertently used “greater than or equal to” language.

In addition, we strongly concur with the guidance that (1) a PDP-CE is acceptable if it is equal to or greater than the decommissioning financial assurance requirement amount; and (2) a PDP-CE may also be acceptable if less than that amount, if adequate justification is provided. We would further suggest that such “justification” could include submittal of a SSCE.

“C.1.4.2. Assessment of the major factors that could affect the preliminary cost estimate”

As in Section C.1.4.1, this portion of NUREG-1713 seems to contain contradictory statements that should be reconciled prior to issuance of the final document. In the first set of bullets in this section, there is reference made to “how disposition of spent fuel could affect the cost of decommissioning” as a “major factor[] that could affect the cost to decommission,” and that the cost estimate should accordingly “include[] an up-to-date assessment” of that factor. However, immediately below, the NUREG states that the cost estimate should not account for items that are “outside the scope of the decommissioning process, such as the maintenance and storage of spent fuel in the spent fuel pool [or] the design or construction of spent fuel dry storage facilities . . .” The descriptions in these sections cloud the distinction between decommissioning activities and spent fuel management activities. In light of the separate NRC funding requirements for decommissioning and spent fuel disposition and management, and historical distinctions licensees have made (based on the NRC regulatory scheme) for funding these activities, the guidance must be clear as to the demarcation of activities related to decommissioning versus those related to spent fuel disposition. The staff should revise the text of the NUREG accordingly.

Finally, the last sentence in the final paragraph on page 13 refers to “the following, or similar, major activities.” However, the following bulleted items are decommissioning phases, not major activities. We therefore suggest replacing the words “major activities” with “decommissioning phases.”

“C.1.5. Evaluation Findings”

The final paragraph under this subheading instructs the NRC reviewer to include results of a licensee “financial assurance review”⁸ in the cost estimate review memorandum where the licensee plans to adjust funding pursuant to 10 C.F.R. § 50.75(f)(4). We reiterate our comment above, with regard to Section C.1., that reference should be made here to both §§ 50.75(f)(4) and 50.82(a)(8)(iv), to address the standards for the possibility that a licensee may adjust its levels of decommissioning funding in response to one or both of those regulations in this context, depending on whether an SSCE is used to satisfy this provision.

⁸ This term appears to refer to the minimum certification amount of 10 C.F.R. § 50.75(c). Elsewhere this figure has been referred to as the “generic” cost estimate. The guidance should conform its terminology in this regard.

“C.2. ESTIMATE OF EXPECTED COSTS IN THE PSDAR”

In the first paragraph under this heading, the staff states that “the cost of placing and maintaining the facility in safe storage should be identified, along with a plan to ensure that sufficient funds will be available for this purpose, if necessary, until such time as the radioactively contaminated material is placed in an authorized waste disposal site.” We recommend that more detail be provided for this guidance to be of use to licensees. Specifically, if this guidance is intended to address the requirements in 10 C.F.R. § 50.82(a)(8)(i)(B), as it appears to be, it would be useful to describe the factor(s) (*e.g.*, timing of going to SAFSTOR, status of decommissioning activities at that point) envisioned by the staff with regard to the hypothetical scenario of a facility being placed in SAFSTOR status that would be the subject of the demonstration under this provision.

“C.2.A. (2) Areas of Review”

This section refers to submission of the PSDAR “prior to or within 2 years following permanent cessation of operations.” As noted earlier in our comments, we recommend that further staff guidance be provided as to how far in advance of ceasing operations may a license submit its PSDAR, or if as the quoted language suggests no such limit exists.

“C.2.A. (3) Acceptance Criteria”

The second paragraph in this subsection defines the acceptance criterion for the cost estimate using the minimum financial assurance funding amount as “that the estimate at least equals [that] amount defined in 10 CFR 50.75(c).” In the following subsection C.2.A. (5), “Evaluation Findings,” the staff provides further detail with respect to the acceptance criterion when it states that the cost estimate in question may be less than the amount derived using § 50.75(c) if “adequate justification” is provided. We believe this latter point is both appropriate and important in the overall regulatory guidance scheme. Accordingly, we recommend, for consistency, that subsection C.2.A. (3) be revised also to reflect the additional guidance in C.2.A. (5). We propose adding the language “unless otherwise adequately justified” to the end of the first and second sentences in the second paragraph of section C.2.A. (3) to address this point.

“C.2.C. (2) Areas of Review”

Please refer to our earlier comment with regard to Section C.2.A.(2).

“C.2.C.(3) Acceptance Criteria”

Please refer to our earlier comment with regard to Section C.2.A.(3).

“C.2.D. Site-Specific Cost Estimate”

The language “if not previously submitted” should be added to the end of the first sentence under the above subheading, to conform the text to the actual language of § 50.82(a)(8)(iii).

In the following paragraph, we suggest revising the second and third sentences to read “. . . the same review process should be used if the licensee intends to satisfy both requirements with the SSCE. In such case, the reviewer is referred to the Acceptance Criteria . . .” This additional language serves to clarify the NRC review process in the event a SSCE is submitted by a licensee to satisfy the requirement both for that estimate as well as for a PSDAR-EEC.

“C.2.D. (2) Areas of Review”

We propose adding language to the final sentence in this subsection so that it reads “The intent of this cost estimate is to provide the NRC with an up-to-date estimate, which is based on an estimate that may or may not also be intended to satisfy the SSCE required by § 50.82(a)(8)(iii).” This added language will provide flexibility to the NRC reviewer to account for the different types of, and levels of detail in, the PSDAR-EEC (if filed as a separate estimate) and the SSCE, depending on which type of estimate a licensee may file.

“C.2.D. (3) Acceptance Criteria”

For reasons stated immediately above, we also propose additional language both for this subsection and for the nearly identical text in the following subsection (4), “Review Procedures,” such that the single sentence in each subsection ends as follows: “. . . review of the cost estimate that is submitted with the PSDAR and intended to satisfy the decommissioning funding requirements of both 10 CFR 50.82(a)(4)(i) and 50.82(a)(8)(iii).”

“C.3 SITE-SPECIFIC COST ESTIMATE”

In the first sentence immediately after this heading, we propose adding the words “. . . if not already submitted.” As described in our earlier comments, this will conform the language in the NUREG with the actual text of 10 C.F.R. § 50.82(a)(8)(iii). We also suggest modifying the next sentence to read “It may or may not have already been provided with another cost estimate (*e.g.*, the PSDAR to satisfy both the PSDAR-EEC requirement (10 CFR 50.82(a)(4)(i)) and the SSCE requirement (10 C.F.R. § 50.82(a)(8)(iii)).”

“C.3. (2) Areas of Review”

Consistent with our "General" comments above, we propose modifying the third sentence in this subsection to read as follows: “Additionally, cost estimates may be submitted

pursuant to 10 CFR 50.75(b)(4). However, those estimates need not be as detailed as the SSCEs submitted pursuant to 10 CFR 50.82(a)(8)(iii), provided they are equal to or greater than the funding assurance from 10 CFR 50.75(c). A licensee may also submit a SSCE in accordance with the guidance provided herein to satisfy 10 C.F.R. §§ 50.75(b) and 50.82(a)(8)(iii) in lieu of a CE (pursuant to 10 C.F.R. § 50.75(b)(4)) or a certification formula amount (pursuant to 10 C.F.R. § 50.75(c)). In that case, if the amount of the SSCE is less than the certification formula amount a license must provide adequate justification for the difference.” We also propose modifying the final sentence in this subsection to read “This section of the SRP is applicable to SSCE submittals made pursuant to 10 CFR 50.82(a)(8)(iii).” The purpose of this additional language is to provide more accurate and detailed guidance to licensees regarding the different requirements contained in the cited provisions.

Finally, we request that the staff confirm that following the shutdown of a plant, the plant’s decommissioning cost determination is arrived at using a SSCE, and accordingly the minimum certification amount using the formula in 10 C.F.R. §§ 50.75(b) and (c) is no longer applicable.

“C.3. (3) Acceptance Criteria”

The list of bulleted items in this subsection does not match the list in the corresponding subsection (C.3.1) of DG-1085. These two lists should be harmonized.

“C.3. (4) Review Procedures”

On page 37 within this subsection, the next-to-last bulleted item should reference 10 C.F.R. § 50.82(a)(8)(i)(B) as the regulatory source for this provision.

“C.3. (5) Evaluation Findings”

This subsection of the NUREG states in part that “the NRC staff reviewer shall verify that sufficient information has been provided to satisfy the requirements of the underlying regulations (10 CFR 50.82(a)(8)(iii) or 10 CFR 50.75(b)), which are that the cost estimate that has been submitted is a SSCE.” Consistent with our “General” comment above, we note that if a § 50.75(b) CE is performed that is not a SSCE, then it is not necessary to provide the same level of detail to satisfy the cost estimate requirements in § 50.75(b)(4) compared to the SSCE requirements of 10 C.F.R. § 50.82(a)(8)(iii), where the amount described in the CE is at least as much as the amount derived from using the algorithm in § 50.75(c). We suggest that a statement to that effect be included in this and the other sections discussed above where this distinction should be made.

COMMENTS ON DRAFT REGULATORY GUIDE DG-1085
(STANDARD FORMAT AND CONTENT OF DECOMMISSIONING COST
ESTIMATES FOR NUCLEAR POWER REACTORS)

General Comment on DG-1085

As with NUREG-1713, we wish to commend the staff on its effort to provide guidance on this topic and the opportunity for comment.

We also wish to note that our “General” comment provided with respect to NUREG-1713 is equally applicable here, and in particular that the “cost estimate” (“CE”) set forth in 10 C.F.R. § 50.75(b)(4) must be addressed separately from the other estimates and that such guidance should appear in DG-1085 as well. As we noted in our comments on the companion SRP, the NRC’s regulations do not support the proposition that this particular “cost estimate” must be comparable to the SSCE provided for in 10 C.F.R. § 50.82(a)(8)(iii). Rather, the CE is a separate estimate and should be treated as such in the guidance. And in particular, the CE need not, and should not be required to, contain the same level of detail as the SSCE. The reasons for this are spelled out in our “General” comment on NUREG-1713. Accordingly, this and many other comments on that document apply with equal force and reason to this Draft Regulatory Guide, and should be read as such.

Specific Comments on DG-1085

“A. INTRODUCTION”

In the first paragraph under this heading, the NRC staff explains the purpose of publishing this regulatory guide as “to provide licensees with guidance on a method that is acceptable to the NRC staff on the preparation of the major cost estimates specified in the regulations” (emphasis added). The term “major” is nowhere defined in the Regulatory Guide (RG) or corresponding regulations and should be removed. We suggest substituting the word “following” for “major,” for reasons of clarity.

On page 2 of DG-1085, the first bulleted paragraph, which describes site-specific decommissioning cost estimates, is followed by a second non-bulleted paragraph stating that a licensee may substitute a certification amount of funds for decommissioning based on a site-specific cost estimate equal to or greater than that calculated using the formula in 10 C.F.R. § 50.75(c) if a higher funding level is desired. As discussed in our “General” comments above, and in more detail on NUREG-1713, the cost estimate discussed in the nonbulleted paragraph, *i.e.*, that cited in 10 C.F.R. § 50.75(b)(4), is not the same cost estimate as described in 10 C.F.R. § 50.82(a)(8)(iii). Accordingly, this nonbulleted paragraph should be deleted and the cost estimate under Section 50.75(b)(4) identified separately in this section and separate guidance provided with respect to the CE.

Status of Regulatory Guide 1.159

The current decommissioning regulations were largely finalized in 1988, and describe NRC requirements regarding, among other items, decommissioning options, planning for decommissioning, assurance of availability of funds for decommissioning and license termination. 10 C.F.R. § 50.75, which was added in the 1988 rule, delineates the agency's requirements for preliminary cost estimates and the certification process. NRC Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors" (Aug. 1990, issued in draft revised form May 2001), addresses those two topics in comprehensive detail and has been relied upon by licensees for guidance for over a decade. There has been no showing, in DG-1085 or otherwise, that the guidance in RG 1.159, including as that guidance has been proposed to be updated, is deficient or no longer applicable. Yet a statement on page 2 of DG-1085 provides that "This regulatory guide supersedes the cost estimate reporting guidance provided in Regulatory Guide 1.159 . . ." It is unclear which if any portions of that aforementioned guidance have been rendered inapplicable.

We strongly urge the NRC not to override unnecessarily the cost estimate reporting guidance in RG 1.159. The broad "superseding" language in the Introduction portion of DG-1085 is imprecise, to say the least. Furthermore, DG-1085 addresses numerous cost estimate processes beyond the certification process, thus indicating little need to "supersede" in toto RG 1.159.

However, to the extent the NRC does believe that DG-1085 supersedes one or more provisions of RG 1.159, we request that the extent of such revision be described as explicitly as possible, by citation to sections and paragraphs of RG 1.159 that are no longer valid. If the purpose of the new guidance in DG-1085 is merely to supplement RG 1.159, the staff should make that clear in the final version of DG-1085, and again explain in detail the parameters of its revisions. Ultimately, in such a situation we believe the staff should modify RG 1.159 for continued licensee use to ensure a seamless guidance scheme remains in place with regard to the decommissioning funding arena.

The third-from-last paragraph of the Introduction on page 2 lends itself to a number of editorial and substantive comments. The first sentence is awkward and should be amended for purposes of clarity. We suggest substitute language, to read "NRC regulations address, and minimum decommissioning funding requirements therefore concern, only the efforts necessary to effect termination of the Part 50 reactor license." The final sentence of this paragraph is also inaccurate and should be revised. The phrase "non-decommissioning costs" should be changed to "non-NRC decommissioning costs." This is because, for instance, there can be site restoration costs that are considered decommissioning costs in other contexts but are not NRC-required, or even addressed by NRC regulations. Similarly, there may be activities that, while not covered by NRC decommissioning regulations, are required to be accomplished during decommissioning by other Federal or State regulatory entities. We also suggest, in this regard, that this paragraph cite to or quote the language in 10 C.F.R. § 50.2 where the NRC defines the term "decommission" for NRC purposes.

Turning to the following paragraph, we believe the first sentence of the next paragraph should be revised to read “Regulations applicable to managing, and funding the management of, irradiated fuel following shutdown are contained in 10 CFR 50.54(bb).” This more accurately conveys the meaning and scope of § 50.54(bb).

“B. DISCUSSION”

On page 3 of this Section, directly under the heading ‘**B. DISCUSSION**,’ the subheading ‘**DECOMMISSIONING OPTIONS**’ should be added.

On page 4, in the first bulleted paragraph under ‘**DECOMMISSIONING COST ESTIMATES**,’ the second sentence should be revised to read “Note that 10 CFR 50.75(f)(4) requires a licensee to include plans to adjust funding levels over the remaining years on the license to demonstrate a reasonable level of financial assurance, if necessary, in the preliminary cost estimate.” The additional language serves to more accurately describe the scope of the cited provision.

With regard to the second, nonbulleted paragraph under the third bullet on page 4, we reiterate our “General” comments on the draft SRP and our comments with respect to the corresponding sections of the draft SRP (and above concerning the similar nonbulleted paragraph on page 2 of DG-1085). In short, the cost estimate (“CE”) mentioned in 10 C.F.R. § 50.75(b)(4) is a separate cost estimate from the SSCE of 10 C.F.R. § 50.82(a)(8)(iii) and should be addressed separately.

In the first bulleted paragraph on page 5, the staff states that § 50.82(a)(9)(i) “requires that a licensee must submit its LTP at least two years before termination of the license date.” We recommend that the staff clarify how far in advance of license termination an LTP may be submitted. Although a licensee may as a matter of practice choose not to submit its LTP until the regulatory deadline (*i.e.*, two years prior to expected termination), it would be helpful to indicate whether there is a date before which an LTP submittal would not be appropriate or accepted. We believe that the guidance should be clear that so long as a licensee is able to reasonably address the matters to be included in the LTP there should be no specific early limit for submittal.¹

With respect to the second paragraph on page 5 of DG-1085, we request clarification of the term “generic” in line 8 of that paragraph. The term “generic” appears to refer generally to Section 50.75. It would be better to cite Section 50.75 specifically and also address the implications if an SSCE had been submitted early in a plant’s life.

Immediately thereafter, the staff discusses “use of any of the decommissioning funds . . .” and limits on such use contained in § 50.82(a)(8)(i). We request that the staff clarify here the use of the term “any” in the context of dealing with NRC and non-NRC

¹ We note also that even if additional information were to become available, updating the LTP would be appropriate and, in certain instances, required (*see, e.g.*, 10 C.F.R. § 50.9).

decommissioning funds. Along those lines, the final sentence of the paragraph describes a request that the licensee provide the NRC “a clear accounting of the allocation of funds between NRC-required and other decommissioning activities.” Licensees may well have funds in which money intended for NRC and non-NRC decommissioning-related costs are maintained in the same fund and possibly in the same account. Nonetheless, the licensee should, as suggested by this draft guidance, be able to provide “a clear accounting” of which funds fall into which category, to allow for an effective segregation (whether by separate accounts or by some other accounting) of the NRC and non-NRC funds.

Specifically, we request that the staff provide additional guidance as to the circumstances, timing and mechanism(s) by which licensees may effectuate or demonstrate the separation of NRC and non-NRC funds even when those funds are present in the same trust and possibly the same account. In our view, funds that were allocated for non-NRC decommissioning purposes (perhaps as demonstrated by the itemization of costs provided to a public utility commission and on which total collections through rates are based), and which are not themselves relied upon to satisfy NRC decommissioning funding requirements, should be readily segregable by licensees at any point in time. Licensees who are in this position should not be penalized by this absolute withdrawal restriction that prevents the use of non-NRC decommissioning funds. Regardless of the reason a licensee may have commingled NRC and non-NRC funds, it is an unjustified financial penalty on licensees to prevent the use of those non-NRC decommissioning funds.

“C. REGULATORY POSITION”

In the second paragraph under this heading, the staff states that “the costs of demolition of decontaminated structures, site restoration activities, or other activities not involved with removing the facility from service or reducing residual radioactivity are not considered decommissioning costs by the NRC.” The double negative in the sentence suggests an incorrect regulatory position. The statement implies that a licensee could undertake activities to remove a facility from service which are not required by the NRC for decommissioning, because they are unrelated to reducing radiological contamination, but could still be considered NRC decommissioning-related costs. Such an interpretation would be contrary to actual NRC regulatory requirements and thus incorrect. We thus suggest that the staff redraft this sentence to accurately reflect the regulatory requirements.

In the first paragraph on page 6, the second sentence states that “[t]he estimate of expected costs will be considered deficient if the decommissioning cost estimate is less than the decommissioning trust requirement and adequate justification is not provided.” We fully support this perspective of allowing “justification” in such circumstances and request that the staff provide additional direction concerning the mechanism by which a licensee can provide “adequate justification.” We also recommend that the staff acknowledge the acceptability of using a site-specific cost estimate (SSCE) in such cases, and identify the point in time prior to permanent cessation of licensed operations when that estimate can be proffered.

“1. PRELIMINARY COST ESTIMATE PRIOR TO THE END OF OPERATIONS”

The first paragraph under this subheading states that “The licensee already will have submitted a cost estimate for establishing a fund for decommissioning as required by 10 CFR 50.75(b).” This statement is incorrect. It is possible that a licensee, at this point in the process, will have satisfied the § 50.75(b) certification requirement by the use of the algorithm in 10 C.F.R. § 50.75(c) rather than a cost estimate mentioned in § 50.75(b)(4). We therefore suggest that the sentence be redrafted to reflect this possible scenario.

On page 7, the second bulleted paragraph states that a suggested format for providing decommissioning costs, including anticipated costs of low-level waste (LLW) disposal, is presented in Table 1 of DG-1085. However, Table 1 does not present the format described; that format appears instead to be contained in Table 2. This paragraph should be revised accordingly.

“2. ESTIMATE OF EXPECTED COSTS IN THE PSDAR”

The first sentence in the first paragraph under this heading states that “Prior to or within two years following permanent cessation of operations, the licensee is required by 10 CFR 50.82(a)(4)(i) to submit a PSDAR to the NRC.” We request the staff indicate whether there is any limit as to how far in advance of ceasing operations it would allow a licensee to submit a PSDAR, or, as the regulation and guidance suggest, that a PSDAR can be submitted effectively at any time prior to 2 years following shutdown.

“2.1 Cost Estimate Based on Financial Assurance Amounts (10 CFR 50.75(b) and (c))”

This section discusses guidance that is already included in the above-captioned NRC regulations, RG 1.159 and/or NUREG-1307. Accordingly, we suggest that the staff address whether any aspect of this guidance is intended to supersede or revise already existing guidance with regard to this section of DG-1085.

“2.2 Cost Estimate Based on Actual Costs at Similar Facilities”

The second bulleted item under this subheading mentions “A list of cost factors” to be considered in an estimate of expected radiological decommissioning costs based on actual costs of a different but similar type of plant, but provides no examples. DG-1085’s companion document NUREG-1713 contains such a list on pages 22-23 of its identically titled section; it would be helpful to reprint that list here or refer to NUREG-1713.

The third bulleted item on page 9 states that adjustment factors between actual and estimated costs, as discussed in Regulatory Position 2.1, should be explained. However, adjustment factors discussed in that Regulatory Position would not necessarily be used to compute estimated costs. For example, rather than using the escalation factor for waste burial, a

licensee may use actual estimates of increased volumes and burial charges to compute the increase in waste burial between the actual and estimated costs. As read in conjunction with our comment on Regulatory Position 2.1 above, this comment provides further justification for removing that guidance from DG-1085 and leaving it in RG 1.159, where it already exists in greater and more useful detail.

“2.3 Generic Cost Estimate”

The second bulleted item under this subheading should read ‘A discussion of the methodology used to derive the cost estimates including the source of the generic estimate.’ This will make the item more consistent with a similar statement in the companion document NUREG-1713.

The discussion of decommissioning costs for the DECON and SAFSTOR options (on page 11) refers to “decommissioning cost categories.” This phrase should be changed to “decommissioning activities” to agree with the term used in Table 2 (where the costs of these activities are to be tabulated).

“3. SITE-SPECIFIC COST ESTIMATE”

We believe that, for a number of reasons discussed in our “General” comments, it is necessary for this draft RG to distinguish between the treatment afforded a “cost estimate” under Section 50.75(b)(4) and a site-specific cost estimate under Section 50.82(a)(8)(iii) (that we suggest may be used in lieu of the Section 50.75 CE). We believe this guidance should reflect that distinction and reflect our “General” comments on this topic.

“3.1 General Information”

As we commented with regard to Regulatory Position 2.3 above, the phrase used in the third bulleted item “decommissioning cost categories” should be revised to read “decommissioning activities,” as that is the term used in Table 2 where the costs of these activities are to be tabulated.

“3.3 Detailed Schedule (Gantt Chart or Equivalent) of Decommissioning Activities”

Our comment on this section of DG-1085 is based on the same concern raised in regard to Section C.3 of NUREG-1713, “Site-Specific Cost Estimate.” Our concern is that among the decommissioning activities listed in this section are ones associated with removal of spent fuel pool water and equipment, which would not necessarily be undertaken under all scenarios in which the fuel was continued to be stored onsite and dispositioned under the guise of activities covered by 10 C.F.R. § 50.54(bb). We suggest that this section be revised to note that in certain circumstances, some SFP-related activities need not be included in a detailed schedule of decommissioning activities. This comment also applies to Section 3.4 of DG-1085, “Cost Estimate for the Removal or Radiological Decontamination of Major Radioactive Components,” with regard to spent fuel racks, for identical reasons.

“4. LICENSE TERMINATION COST ESTIMATE”

In the first paragraph immediately following this heading, the draft RG states that “According to 10 CFR 50.82(a)(9)(i), the licensee must submit the LTP at least two years before termination of the license.” Similar to the comments above, we request that the staff address whether there is any limit as to the earliest point at which the LTP could be filed. We note that neither the regulation nor the draft guidance imposes an “earliest date.” We believe explicit clarification to that effect would be appropriate.

The next paragraph provides that “The cost estimate portion of the LTP is an updated, equally detailed, version of the site-specific estimate submitted to the NRC earlier (see Regulatory Position 3).” It is unclear how the NRC would define “equally detailed.” For example, is it sufficient to provide a redlined version of the SSCE showing where changes, if any, would be made for the LTP cost estimate, or should there be a wholly new analysis? Expansion of the guidance on this point will be beneficial to licensees in order to avoid unacceptable initial filings that must later be revised.